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**DEPARTMENT OF HOMELAND SECURITY**

**8 CFR Parts 103, 212, 217, and 286**

**[Docket No. USCBP-2021-0014; CBP Dec. 22-07]**

**RIN 1651-AB14**

**Implementation of the Electronic System for Travel Authorization (ESTA) at U.S.**

**Land Borders**

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security (DHS).

**ACTION:** Interim final rule; solicitation of comments.

**SUMMARY:** This rule amends Department of Homeland Security (DHS) regulations to implement the Electronic System for Travel Authorization (ESTA) requirements under section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007, for noncitizens who intend to enter the United States under the Visa Waiver Program (VWP) at land ports of entry. Currently, noncitizens from VWP countries must provide certain biographic information to U.S. Customs and Border Protection (CBP) officers at land ports of entry on a paper I-94W Nonimmigrant Visa Waiver Arrival/Departure Record (Form I-94W). Under this rule, these VWP travelers will instead provide this information to CBP electronically through ESTA prior to application for admission to the United States. DHS has already implemented the ESTA requirements for noncitizens who intend to enter the United States under the VWP at air or sea ports of entry.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE

*FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments, identified by docket number, by the following method:

- Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2021-0014.

Due to COVID-19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Due to relevant COVID-19-related restrictions, CBP has temporarily suspended its on-site public inspection of submitted comments.

**FOR FURTHER INFORMATION CONTACT:** Sikina S. Hasham, Director, Electronic System for Travel Authorization (ESTA), Office of Field Operations, 202-325-8000, [sikina.hasham@cbp.dhs.gov](mailto:sikina.hasham@cbp.dhs.gov).

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## **I. Public Participation**

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this interim final rule. U.S. Customs and Border Protection (CBP) also invites comments on the economic, environmental, or federalism effects that might result from this regulatory change. Comments that will provide the most assistance to CBP will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. Written comments must be submitted on or before [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. CBP will consider those comments and make any changes appropriate after consideration of those comments.

## **II. Executive Summary**

The Visa Waiver Program (VWP) permits eligible citizens and nationals from 40 participating countries to apply for admission to the United States at ports of entry for periods of 90 days or less for business or pleasure without first obtaining a nonimmigrant B-1, B-2, or B-1/B-2 visa. The Department of Homeland Security (DHS) is amending its regulations to require VWP travelers applying for admission at U.S. land ports of entry to receive a travel authorization via the Electronic System for Travel Authorization (ESTA)

from CBP prior to applying for admission to the United States.

A travel authorization via ESTA is a positive determination of eligibility to travel to the United States under the VWP. Travelers without a travel authorization must have a visa issued by a U.S. Embassy or Consulate for admission to the United States.

Currently, VWP travelers applying for admission at U.S. land ports of entry must complete a paper I-94W Nonimmigrant Visa Waiver Arrival/Departure Record (Form I-94W) prior to admission that provides biographical and travel information to CBP. Through this interim rule, instead of completing a paper Form I-94W at land ports of entry, VWP travelers must now provide this information electronically to CBP via ESTA.

DHS has already instituted the ESTA program at air and sea ports of entry. On June 9, 2008, DHS published an interim final rule (IFR), “Changes to the Visa Waiver Program to Implement the Electronic System for Travel Authorization (ESTA) Program,” in the *Federal Register* (73 FR 32440) (hereafter, “ESTA Air and Sea IFR”) announcing the creation of the ESTA program for nonimmigrant visitors traveling to the United States by air or sea under the VWP. After a thorough review of the comments received, on June 8, 2015, DHS published in the *Federal Register* (80 FR 32267) a final rule titled “Changes to the Visa Waiver Program to Implement the Electronic System for Travel Authorization (ESTA) Program and the Fee for Use of the System” (hereafter, “ESTA Air, Sea, and Fee Final Rule”).<sup>1</sup> Specifically, DHS amended title 8 of the Code of Federal Regulations (CFR) to provide that VWP travelers applying for admission at U.S. air and sea ports of entry must receive a travel authorization from CBP via ESTA. *See* 8 CFR 217.5 (ESTA regulations). The ESTA regulations set forth the general requirements, the time frame for obtaining a travel authorization, the required data elements, the duration of a travel authorization, and the fee for obtaining a travel

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<sup>1</sup> On August 9, 2010, DHS published an IFR in the *Federal Register* (75 FR 47701) to establish a fee for ESTA.

authorization. With the implementation of ESTA, VWP travelers who arrive at air and sea ports of entry are no longer required to complete a paper Form I-94W.

This interim rule expands the requirements of ESTA to land ports of entry. Specifically, it extends the electronic collection of the information requested on paper Form I-94W to VWP travelers who intend to travel to the United States by land. For these travelers, all the ESTA requirements in 8 CFR 217.5 are identical to air and sea travelers, except for the time frame for receiving a travel authorization.

As provided in 8 CFR 217.5(b), air and sea VWP travelers must receive a travel authorization prior to embarking on a carrier for travel to the United States. Under this interim rule, however, VWP travelers intending to travel to the United States by land must instead receive a travel authorization prior to application for admission to the United States. The different time frames take into account the fact that travel by land is often by privately owned vehicle or on foot and not by carrier, as is usually the case when people travel to the United States by air or sea.

To expedite the admission process, DHS encourages VWP travelers who intend to travel to the United States by land to apply for a travel authorization at least 72 hours in advance of their anticipated arrival at a U.S. land port of entry. By submitting an ESTA application well in advance of anticipated arrival at a land port of entry, a traveler will be able to minimize the likelihood that he or she will be found to be inadmissible under the VWP upon arrival at the port of entry and prevent a potentially long wait time at the border while his or her application is under review.

Implementing ESTA at land ports of entry will expedite the admission of VWP travelers and reduce traveler delays, especially when VWP travelers apply for a travel authorization in advance of travel. A travel authorization will be valid at all ports of entry. Therefore, if a VWP traveler already has a valid travel authorization obtained for air or sea travel, the traveler will not need to obtain another travel authorization for

admission at a land port of entry.

Following the implementation of ESTA at U.S. land ports of entry, all VWP travelers are required to complete the electronic version of the paper Form I-94W (*i.e.*, an ESTA application) instead of the paper Form I-94W.

As discussed in Section IV(B) of the Background section, “Executive Orders 13563 and 12866,” and detailed in the complete regulatory assessment entitled “Regulatory Assessment for the Implementation of the Electronic System for Travel Authorization (ESTA) at U.S. Land Borders Interim Final Rule,” available at docket number USCBP-2021-0014, this rule will provide immediate benefits to VWP travelers and to CBP. This rule will produce a consistent, modern VWP admission policy, strengthen national security through enhanced traveler vetting, expedite entry processing at land ports of entry, collect Form I-94W information electronically, and reduce inadmissible traveler inspections, generating time and cost savings for CBP and VWP travelers.

### **III. Background**

#### **A. Visa Waiver Program**

Pursuant to section 217 of the Immigration and Nationality Act (INA), 8 U.S.C. 1187, the Secretary of Homeland Security, in consultation with the Secretary of State, may designate countries for participation in the VWP if certain requirements are met. See 8 U.S.C. 1187(c)(2). The INA also sets forth requirements for continued eligibility and termination of VWP status.

Eligible citizens and nationals of VWP countries may apply for admission at a U.S. port of entry as nonimmigrant visitors for a period of ninety (90) days or less for business or pleasure without first obtaining a nonimmigrant B-1, B-2, or B-1/B-2 visa. These travelers, however, must comply with applicable regulations and be admissible

under statutory and regulatory requirements.<sup>2</sup> Other nonimmigrant visitors who are not from VWP countries, or visitors from VWP countries who are traveling for purposes other than business or pleasure, must obtain a visa from a U.S. Embassy or Consulate and generally must undergo an interview by consular officials overseas in advance of travel to the United States.

### *1. Current CBP Processing of VWP Travelers at Land Ports of Entry*

The way in which a VWP traveler is processed at a land port of entry depends on the documentation the traveler presents upon application for admission. In some cases, the VWP traveler may be referred to secondary processing. Generally, in secondary processing, the traveler must complete a paper Form I-94W and pay a \$6.00 processing fee. CBP estimates that the paper Form I-94W takes 16 minutes (0.2667 hours) to complete.<sup>3</sup>

In secondary, once a VWP traveler completes the paper Form I-94W, a CBP officer enters the traveler's passport and paper Form I-94W information into an internal database and collects the traveler's biometric data (*i.e.*, fingerprints and photograph). CBP uses the data collected on the paper Form I-94W to populate a database of crossing history and admission status in the United States. This database stores the admissions and departures of travelers entering or leaving the United States. The CBP officer also checks the visitor's personal information against lost and stolen passport databases, government watch lists, and other DHS resources. Based on this information, as well as an interview with the traveler, the CBP officer determines whether or not the traveler is admissible to the United States. If admissible, the CBP officer stamps the traveler's

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<sup>2</sup> For VWP travelers arriving at the United States at air and sea ports of entry, the ESTA requirements as set forth in 8 CFR 217.5 apply. ESTA requirements are described in detail in Section III(B) of the Background section of this document.

<sup>3</sup> Source: U.S. Customs and Border Protection. *Supporting Statement for Paperwork Reduction Act Submission 1651-0111: Arrival and Departure Record (Forms I-94, I-94W) and Electronic System for Travel Authorization (ESTA)*. February 12, 2019. Available at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201810-1651-001](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201810-1651-001). Accessed May 22, 2019.



paper Form I-94W and passport, provides the traveler with the departure portion of the paper Form I-94W (“I-94W Departure Record”) and grants the traveler admission to the United States for a period of up to 90 days (“90-day VWP admission period”).<sup>4</sup>

The processing of a VWP traveler at a land port of entry may be different if the traveler is within a current 90-day VWP admission period (meaning, the traveler has been processed and admitted into the United States under the VWP within the last 90 days, with or without a current ESTA travel authorization), or if the traveler has a current ESTA travel authorization, but is not within a current 90-day VWP admission period.

In the former case, where the traveler is within a current 90-day VWP admission period, the traveler may generally be processed at CBP’s primary inspection. This is because the information typically gathered during secondary processing was already captured earlier through either the traveler’s ESTA application (if he or she first arrived in the United States by air or sea) or the Form I-94W (if he or she first arrived in the United States by land). This scenario typically occurs when a VWP traveler who has already been admitted into the United States takes a brief excursion into Canada or Mexico, and then seeks to re-enter the United States to resume his or her visit.

In the latter case, when a VWP traveler has a valid ESTA travel authorization, but is not within a current 90-day VWP admission period, the traveler must go to secondary processing and pay the \$6.00 processing fee, but he or she does not need to complete the paper Form I-94W because CBP already has the traveler’s relevant information through his or her ESTA application.

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<sup>4</sup> Generally, admitted VWP visitors must surrender the I-94W Departure Record when leaving the United States. This allows CBP to accurately record traveler departures. However, admitted VWP travelers are not required to surrender the Form I-94W Departure Record when departing the United States for Canada or Mexico for a trip of less than 30 days. These travelers may retain their I-94W Departure Record so that when they resume their visit to the United States, via a land port of entry, they are not required to complete another paper Form I-94W. They may be readmitted into the United States for the balance of time remaining on their 90-day VWP admission period.

If a traveler is refused admission to the United States under the VWP, he or she can visit the nearest U.S. Embassy or Consulate to apply for a nonimmigrant B-1, B-2, or B-1/B-2 visa. This visa would cost a traveler approximately \$302 in fees and time costs to obtain.<sup>5</sup> The overall U.S. admission refusal rate for VWP travelers at land ports of entry is low. From fiscal year (FY) 2013 to FY 2017, CBP recorded 4.0 million VWP traveler arrivals at U.S. land ports of entry, with 99.9 percent of arrivals resulting in admissions to the United States and 0.1 percent resulting in refusals based on paper Form I-94W processing.<sup>6</sup>

## *2. Current CBP Processing of VWP Travelers at Air and Sea Ports of Entry*

A nonimmigrant noncitizen arriving at a U.S. air or sea port of entry under the VWP must obtain a travel authorization via ESTA prior to embarking on a carrier for travel to the United States. If the traveler does not have a travel authorization, he or she must hold an unexpired visa issued by a U.S. Embassy or Consulate. *See* Section 217(a) of the INA, 8 U.S.C. 1187(a). *See also* 8 CFR part 217. The relevant history regarding

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<sup>5</sup> The fees to obtain a nonimmigrant B-1, B-2, or B-1/B-2 visa include a \$160.00 U.S. Department of State fee for DS-160: Online Nonimmigrant Visa Application processing and an estimated \$40.00 in photo, courier, and other miscellaneous expenses. The time cost to obtain a nonimmigrant B-1, B-2, or B-1/B-2 visa is approximately \$102, based on the estimated 5-hour time burden to obtain a nonimmigrant B-1, B-2, or B-1/B-2 visa (including the time spent completing Form DS-160: Online Nonimmigrant Visa Application, traveling to a U.S. Embassy or Consulate for the nonimmigrant B-1, B-2, or B-1/B-2 visa interview, waiting for the interview, and undergoing the interview) and a VWP traveler's hourly time value of \$20.40. CBP bases the \$20.40 hourly time value for VWP travelers on the U.S. Department of Transportation's (DOT) hourly time value of \$20.40 for all-purpose, intercity travel by surface-modes, except high-speed rail. For the purposes of this analysis, CBP assumes that the DOT time value, reported in 2015 U.S. dollars, would be the same for 2019. Source of visa processing fee cost: U.S. Department of State. "Fees for Visa Services." Available at <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/fees/fees-visa-services.html>. Accessed May 7, 2018. Source of photo cost: U.S. Department of State. Supporting Statement for Paperwork Reduction Act Submission: 1405-0015, Application for Immigrant Visa and Alien Registration (Form DS-230). August 3, 2018. Available at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201808-1405-001](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201808-1405-001). Accessed December 20, 2018. Source of other fees: CBP estimates. Source of VWP traveler's hourly time value: U.S. Department of Transportation, Office of Transportation Policy. The Value of Travel Time Savings: Departmental Guidance for Conducting Economic Evaluations Revision 2 (2016 Update). "Table 4 (Revision 2 - 2016 Update): Recommended Hourly Values of Travel Time Savings." September 27, 2016. Available at <https://www.transportation.gov/sites/dot.gov/files/docs/2016%20Revised%20Value%20of%20Travel%20Time%20Guidance.pdf>. Accessed June 11, 2018.

<sup>6</sup> Email correspondence with CBP's Office of Field Operations on April 24, 2015 and May 17, 2018.

this ESTA requirement is set forth below.

In response to the events of September 11, 2001, Congress enacted the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. 110-53 (9/11 Act). To address aviation security vulnerabilities of the VWP, section 711 of the 9/11 Act required the Secretary of Homeland Security, in consultation with the Secretary of State, to develop and implement a fully automated electronic travel authorization system for VWP travelers visiting the United States. The system would collect biographical and other information the DHS Secretary deems necessary to evaluate, in advance of travel, the eligibility of the applicant to travel to the United States under the VWP, and whether such travel poses a law enforcement or security risk. *See* 8 U.S.C. 1187(h)(3)(A). Prior to the establishment of ESTA, VWP travelers could board planes to the United States and be found inadmissible upon arrival at CBP inspection. By establishing ESTA, DHS is able to identify whether the traveler is likely to be admissible upon arrival before the traveler embarks on travel to the United States.

DHS established the electronic equivalent of the paper Form I-94W process at air and sea ports of entry as set forth in the ESTA Air and Sea IFR (73 FR 32440), published on June 9, 2008, and in the ESTA Air, Sea, and Fee Final Rule (80 FR 32267), published on June 8, 2015. ESTA provides for an electronic collection of the information required on the paper Form I-94W in advance of travel. ESTA fulfills the statutory requirements described in section 711 of the 9/11 Act.

DHS stated in the ESTA Air and Sea IFR that the development and implementation of the ESTA program would eventually allow DHS to automate the requirement that VWP travelers complete a paper Form I-94W prior to being admitted to the United States. *See* 73 FR 32440 at 32443. While the ESTA Air and Sea IFR established the regulations for ESTA, section 711 of the 9/11 Act required DHS to announce implementation of a mandatory ESTA system by publication of a notice in the

*Federal Register* no less than 60 days before the date on which ESTA would become mandatory for all VWP travelers. On November 13, 2008, DHS published such a notice in the *Federal Register* (73 FR 67354) announcing that ESTA would be mandatory for all VWP travelers traveling to the United States seeking admission at air and sea ports of entry beginning January 12, 2009. At that point, DHS began an informed compliance period during which VWP travelers who arrived without prior ESTA authorization were not refused admission on that basis, but were instead permitted to complete the paper I-94W upon arrival in the United States. As of June 29, 2010, however, VWP travelers have been required to receive a travel authorization through the ESTA website, <https://www.cbp.gov/esta>, prior to boarding a conveyance destined for a U.S. air or sea port of entry. *See* 80 FR 32267 at 32285. Travelers who do not receive authorization through ESTA may still apply for a nonimmigrant B-1, B-2, or B-1/B-2 visa issued by a U.S. Embassy or Consulate.

On March 4, 2010, the United States Capitol Police Administrative Technical Corrections Act of 2009, Pub. L. 111-145, was enacted. Section 9 of this law, the Travel Promotion Act of 2009 (TPA), mandated that the Secretary of Homeland Security establish a fee for the use of ESTA and begin assessing and collecting the fee.

On August 9, 2010, DHS published an interim final rule “Electronic System for Travel Authorization (ESTA); Travel Promotion Fee and Fee for Use of the System” in the *Federal Register* (75 FR 47701) (hereafter, “ESTA Fee IFR”) announcing that beginning September 8, 2010, a \$4.00 ESTA operational fee would be charged to each ESTA applicant to ensure recovery of the full costs of providing and administering the system and an additional \$10.00 Trade Promotion Act (TPA) fee would be charged to each ESTA applicant receiving travel authorization through September 30, 2015.<sup>7</sup> *See* 8

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<sup>7</sup> On February 9, 2018, section 30203(a) of the Bipartisan Budget Act of 2018, Pub. L. 115-123, extended the sunset provision of the travel promotion fee through September 30, 2027. On December 20, 2019,

U.S.C. 1187(h)(3)(B), as amended, and 8 CFR 217.5(h).

In response to the request for comments in the ESTA Air and Sea IFR and the ESTA Fee IFR, DHS received a total of 39 submissions. Most of these submissions contained comments providing support, voicing concerns, highlighting issues, or offering suggestions for modifications to the ESTA program. After review and analysis of the comments, on June 8, 2015, DHS published the ESTA Air, Sea, and Fee Final Rule in the *Federal Register* (80 FR 32267) with two substantive regulatory changes. The first change allows the Secretary of Homeland Security to adjust travel authorization validity periods on a per country basis from a general validity period of two years, to a three-year maximum or to a lesser period of time. The second change concerns the TPA fee. In accordance with Section 605 of the Consolidated and Further Continuing Appropriations Act of 2015, DHS extended the end date for assessment of the Travel Promotion Act fee to September 30, 2020. DHS also removed a specific reference to the Pay.gov payment system in order to allow for flexibility in how CBP may collect ESTA fees.

The ESTA Air, Sea, and Fee Final Rule also outlines the various operational changes DHS has implemented since the ESTA program's inception based on the experience DHS gained from operating the ESTA program. For example, VWP travelers who provide an e-mail address to DHS when they submit their application will receive an automated e-mail notification indicating that their travel authorization will expire soon. DHS has also updated the information on the ESTA website to address some of the comments. Finally, DHS has also revised some of the ESTA questions to make them more understandable, removed one of the questions, and added some new questions to

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section 806 of the Further Consolidated Appropriations Act of 2020, Pub. L. 116-94, increased the travel promotion fee from \$10 to \$17. CBP will be publishing a separate rule to reflect these legislative changes.

improve the screening of travelers before their travel to the United States.<sup>8</sup> All these changes took effect on November 3, 2014.

For more details regarding ESTA and the fees associated with ESTA, please see: ESTA Air and Sea IFR; ESTA Fee IFR; and ESTA Air, Sea, and Fee Final Rule. Additional information may also be found on the ESTA website at <https://esta.cbp.dhs.gov>.

## **B. Expanding ESTA to Land Ports of Entry**

From FY 2013 to FY 2017, CBP recorded 4.0 million VWP traveler arrivals at U.S. land ports of entry, with 99.9 percent of arrivals resulting in admissions to the United States and 0.1 percent resulting in refusals based on paper Form I-94W processing. Of the total arrivals, approximately 3.1 million (77.8 percent) were distinct, meaning that they corresponded to VWP travelers required to complete new paper Form I-94Ws and undergo related processing. These distinct travelers were either taking their first trip to the United States by land or they lacked valid Form I-94W Departure Records. The remaining 888,000 arrivals (22.2 percent) were non-distinct, meaning that they corresponded to VWP travelers making repeat visits to the United States using an initial, valid Form I-94W Departure Record.<sup>9</sup>

This interim final rule (hereafter “ESTA Land IFR”) amends title 8 of the CFR to implement ESTA for noncitizens who intend to travel to the United States under the VWP by land. These travelers must now submit an ESTA application instead of the paper Form I-94W. The rule requires each noncitizen traveling to the United States by land under the VWP to obtain from CBP a travel authorization via ESTA prior to

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<sup>8</sup> The ESTA application and the paper Form I-94W are covered by OMB Control Number 1651-0111. The updated questions and additional questions were described in various notices regarding the extension and revision of information collection 1651-0111 requesting public comments published in the *Federal Register* on November 26, 2013 (78 FR 70570), February 14, 2014 (79 FR 8984), December 9, 2014 (79 FR 73096), June 23, 2016 (81 FR 40892), and August 31, 2016 (81 FR 60014).

<sup>9</sup> Travelers with a valid Form I-94W Departure Record are those who departed the United States for Canada or Mexico for a trip of less than 30 days.

application for admission to the United States. With this expansion of ESTA, all VWP travelers will be required to have a travel authorization in advance of applying for admission to the United States.

As summarized in the Executive Summary and in Section IV(B), “Executive Orders 13563 and 12866,” this rule has many benefits. In addition to fulfilling a statutory mandate, ESTA serves the twin goals of promoting border security and legitimate travel to the United States. ESTA increases national security and provides efficiencies in the screening of international travelers by vetting subjects of potential interest before admittance into the United States. The ESTA Land IFR also generates various additional benefits to foreign travelers and DHS (particularly CBP).

VWP travelers intending to arrive at U.S. land ports of entry will benefit from ESTA, especially when the traveler already has a travel authorization or applies for a travel authorization before traveling to the United States. By implementing ESTA at land ports of entry, travelers will no longer have to complete the paper Form I-94W at the land port of entry. This will shorten the admission process at U.S. land ports of entry for both VWP travelers and DHS. Travelers who already have an ESTA travel authorization that is still valid will not have to obtain a new travel authorization or complete the paper Form I-94W when entering at a land port of entry. VWP travelers will also save time by obtaining a travel authorization in advance of travel, which may prevent them from spending time and money to travel to a U.S. land port of entry and possibly be refused admission.

ESTA enables DHS to determine whether a noncitizen is eligible to travel to the United States under the VWP and to identify potential grounds of inadmissibility before the VWP traveler applies for admission at a U.S. land port of entry. By making these determinations before the noncitizen embarks on travel to the United States, DHS will likely be able to reduce the number of noncitizens arriving at U.S. ports of entry who are

determined to be inadmissible upon arrival. In turn, this will reduce the number of inadmissible noncitizens that DHS must process for appropriate refusal or removal proceedings upon arrival. Furthermore, by implementing ESTA at land ports of entry, DHS will also likely reduce wait times for other international travelers arriving at U.S. ports of entry. With reduced wait times, DHS will better allocate existing resources towards screening passengers at U.S. ports of entry, thereby facilitating legitimate travel.

As explained more fully in section III(B)(1), “Obtaining a Travel Authorization,” as a result of this interim final rule, VWP travelers entering the United States at land ports of entry must receive an ESTA travel authorization prior to application for admission to the United States. This time frame is different from the time frame applicable to VWP travelers entering the United States at air and sea ports of entry. VWP travelers entering the United States at air and sea ports of entry must have a travel authorization prior to boarding a carrier destined for the United States. The different time frames take into account the fact that travel by land is often more spontaneous, and sometimes last minute, and often not by a carrier. DHS will not require land carriers (such as bus and rail companies) to screen passengers or necessitate a travel authorization in advance of arrival to a U.S. land port of entry. Other than the different time frames, the ESTA procedures and requirements for VWP travelers arriving at land ports of entry will be the same as the procedures and requirements for VWP travelers arriving at air or sea ports of entry as provided in 8 CFR 217.5. These procedures and requirements are explained below.

#### *1. Obtaining a Travel Authorization*

VWP travelers obtain the required travel authorization by electronically submitting to CBP, via the ESTA website (<https://esta.cbp.dhs.gov>), an application consisting of biographical and other information specified by the Secretary of Homeland Security. The ESTA application captures all data elements included on the paper Form I-



94W. To apply for a travel authorization, a traveler should select the “Apply” feature on the ESTA webpage, enter his or her biographical and travel information as prompted by the fields marked with a red asterisk (the mandatory data elements), enter the optional data elements, if known, and submit the application information. A third party (such as a commercial carrier, travel agent, visa service provider, or relative) may submit an ESTA application on a traveler’s behalf. For each travel authorization, the traveler must pay a fee.

CBP will use information included in a traveler’s ESTA application to determine the eligibility of the noncitizen to travel to the United States and whether the visitor poses a law enforcement or security risk.<sup>10</sup>

CBP will check information submitted by the traveler, or on behalf of a traveler, in his or her ESTA application against all appropriate databases, including lost and stolen passport databases and appropriate watch lists. CBP may deny the traveler’s ESTA application if: (1) a noncitizen does not provide the required information; (2) a noncitizen provides false information; (3) any evidence exists indicating ineligibility to travel to the United States under the VWP; or (4) the travel poses a law enforcement or security risk. Consistent with section 711 of the 9/11 Act, the Secretary, acting through CBP, retains discretion to revoke a travel authorization determination at any time and for any reason. *See* 8 U.S.C. 1187(h)(3)(C)(i). If a noncitizen’s travel authorization application is denied, the noncitizen may still apply to obtain a visa to travel to the United States from an appropriate U.S. Embassy or Consulate.

To verify that the ESTA application has been approved and a travel authorization has been issued, the traveler must return to the ESTA website to view his or her ESTA status. CBP requires a minimum of two hours to make an ESTA application determination. While most determinations will generally be made in approximately two

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<sup>10</sup> *See* 8 U.S.C. 1187(h)(3).

hours, there is no guarantee that an application will be processed in that time frame and some determinations may take longer. In most cases, the applicant will receive an ESTA decision within 72 hours. An applicant may contact the ESTA Help Desk at the Traveler Communications Center by telephone at 1-202-325-5120 for assistance in processing his or her pending application.

DHS recommends that travelers apply for a travel authorization early in the travel planning process, rather than waiting until the traveler is approaching the port of entry. By planning ahead, a traveler who is unable to obtain a travel authorization will still have time to apply for a nonimmigrant B-1, B-2, or B-1/B-2 visa from a U.S. Embassy or Consulate before travel.

## *2. Travel Authorization*

A travel authorization is a positive determination that a noncitizen is eligible to travel to the United States under the VWP during the period of time the travel authorization is valid. A travel authorization is not a determination that the noncitizen is ultimately admissible into the United States. That determination is made by a CBP officer only after an applicant for admission is inspected by a CBP officer at a U.S. port of entry. In addition, ESTA is not a visa or a process that acts in lieu of any visa issuance determination made by the Department of State.

## *3. Timeline for Obtaining a Travel Authorization*

Each VWP traveler arriving at a U.S. land port of entry must have a travel authorization prior to application for admission at a land port of entry. A VWP traveler who does not have a valid travel authorization at the time he or she applies for admission to the United States at a land port of entry will be ineligible for admission under the VWP.

If a VWP traveler arrives at a U.S. land port of entry without a valid travel authorization and wants to apply for one, the traveler will be permitted to withdraw his or

her application for admission, return to Mexico or Canada, submit an ESTA application there, and await receipt of a travel authorization in Mexico or Canada before returning to a U.S. port of entry. Receipt of a travel authorization will take at least two hours from the time that it is submitted. If the traveler's ESTA application is approved, the traveler may return to a U.S. land port of entry to seek admission. If the traveler's ESTA application is not approved, the traveler is not eligible to seek admission to the United States under the VWP. In such a case, the traveler may apply for a nonimmigrant B-1, B-2, or B-1/B-2 visa from a U.S. Embassy or Consulate and then reapply for admission to the United States.

It should be noted that because VWP travelers arriving at U.S. land ports of entry will need to have a travel authorization prior to application for admission, rather than prior to boarding a carrier, land carriers transporting VWP travelers are not responsible for confirming that the VWP traveler is ESTA-compliant. For example, this interim rule would not require bus companies to confirm that their passengers are ESTA-compliant or to transmit any ESTA data elements on behalf of these travelers to CBP.

#### *4. Required ESTA Data Elements*

The current ESTA regulations provide that ESTA will collect such information as the Secretary deems necessary to issue a travel authorization as reflected on the ESTA application. *See* 8 CFR 217.5(c). This information is included on the ESTA website. VWP travelers arriving at land ports of entry will have to provide these same data elements. The ESTA website also includes some optional data elements. This data should be provided, if known.

#### *5. Scope of Travel Authorization*

Consistent with section 711 of the 9/11 Act, a travel authorization does not restrict, limit, or otherwise affect the authority of CBP to determine a noncitizen's admissibility into the United States during inspection at a port of entry.

## *6. Duration*

The same general rule and exceptions regarding the duration of a travel authorization as set forth in 8 CFR 217.5(d) will apply to a travel authorization issued for travel to air, sea, and land ports of entry. DHS will notify an individual with an approved ESTA authorization at the e-mail address he or she provided in the application when his or her ESTA expiration date is approaching. Subject to certain exceptions, each travel authorization will generally be valid for a period of two years from the date of issuance, meaning a noncitizen may travel to the United States repeatedly within a two-year period without obtaining another authorization.

## *7. Events Requiring New Travel Authorization*

The events requiring a new travel authorization as set forth in 8 CFR 217.5(e) and summarized below are the same regardless of whether the travel authorization was issued for travel to U.S. air, sea, or land ports of entry.

A VWP traveler must obtain a new travel authorization approval if any of the following conditions occurs: (1) the noncitizen is issued a new passport; (2) the noncitizen changes his or her name; (3) the noncitizen changes his or her gender; (4) the noncitizen changes his or her country of citizenship; or (5) the circumstances underlying the noncitizen's previous responses to any of the ESTA application questions requiring a "yes" or "no" response (eligibility questions) have changed.

## *8. Fee*

The TPA mandated that the Secretary of Homeland Security establish a fee for the use of ESTA and begin assessing and collecting the fee. DHS implemented the fee requirements of the TPA in the ESTA Fee IFR and ESTA Air and Sea Final Rule. VWP travelers applying for a travel authorization to travel to U.S. air and sea ports of entry

must pay a \$4.00 ESTA operational fee and an additional \$10.00 Travel Promotion Act fee through September 30, 2020.<sup>11,12</sup>

This same fee will apply to VWP travelers arriving at U.S. land ports of entry. For a detailed discussion about this fee, see the ESTA Fee IFR and the ESTA Air and Sea Final Rule.

It is important to note that a noncitizen may travel to the United States repeatedly within the validity period using the same travel authorization, regardless of the mode of transportation used. Therefore, VWP travelers who intend to arrive in the United States at a land port of entry and already have a travel authorization that is still valid will not need to apply for a new travel authorization or pay another ESTA fee.

However, a VWP traveler arriving at U.S. land ports of entry will still have to pay the \$6.00 I-94W fee provided for in 8 CFR 103.7(d)(5), unless he or she is entering within a current 90-day VWP admission period. This fee covers processing costs, including those involved in collecting traveler fingerprints.<sup>13</sup> Although the collection of the I-94W data elements will now be done electronically through ESTA, travelers at the land border will continue to receive a printed departure record. This printed departure record is equivalent to the departure portion of the paper Form I-94W. This document will be stamped by the CBP officer who processes the traveler's admission and should be retained by the traveler while he or she is in the United States. VWP visitors who depart from the United States via a land port will generally be required to surrender this

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<sup>11</sup> If the ESTA application is denied, the applicant will be refunded the \$10.00 Travel Promotion Act fee. The fee was originally authorized by the TPA through September 30, 2015, but was extended through September 2020 by the Consolidated and Further Continuing Appropriations Act of 2015.

<sup>12</sup> On February 9, 2018, section 30203(a) of the Bipartisan Budget Act of 2018, Pub. L. 115-123, extended the sunset provision of the travel promotion fee through September 30, 2027. On December 20, 2019, section 806 of the Further Consolidated Appropriations Act of 2020, Pub. L. 116-94, increased the travel promotion fee from \$10 to \$17. CBP will be publishing a separate rule to reflect these legislative changes. CBP has not yet begun collecting the higher fee, but will do so after the fee rule has been published.

<sup>13</sup> Travelers arriving by air and sea pay the same fee; however, the fee is included in the price of the carrier tickets and is not collected separately upon arrival.

document upon leaving the United States.<sup>14</sup> CBP will enter the departure information manually into the appropriate CBP database.<sup>15</sup> The \$6.00 fee supports CBP's efforts in issuing these departure records and entering the departure information.

### *9. Judicial Review*

Section 711 of the 9/11 Act amended section 217 of the INA to provide that no court shall have jurisdiction to review an eligibility determination under the electronic travel authorization system. *See* INA section 217(h)(3)(C)(iv), 8 U.S.C. 1187.

Accordingly, a determination under ESTA will be final and, notwithstanding any other provision of the law, is not subject to judicial review.

## **C. Discussion of Regulatory Changes**

DHS is amending parts 103, 212, 217, and 286 of title 8 of the CFR, as set forth below, in order to expand the ESTA requirements to VWP travelers arriving at U.S. land ports of entry and to update the regulations.

### *1. 8 CFR part 103*

Section 103.7(d)(5) of the DHS regulations (8 CFR 103.7), titled "Form I-94W," enumerates the \$6.00 fee associated with the issuance of Form I-94W. The paragraph is revised to incorporate a definition of "issuance" that reflects the new procedure involved in electronically collecting the traveler's information, then using that information to print a departure record for VWP travelers entering the United States at land ports of entry. The new provision will now clarify that "the term 'issuance' includes, but is not limited to, the creation of an electronic record of admission or arrival/departure by DHS following an inspection performed by a CBP officer, which may be provided to the

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<sup>14</sup> Admitted VWP travelers will not be required to surrender the printed departure record when departing the United States for Canada or Mexico for a trip of less than 30 days. These travelers may retain their printed departure record so that when they resume their visit to the United States, CBP will not have to print another departure record and the traveler may be readmitted into the United States for the balance of time remaining on his or her I-94W Departure Record.

<sup>15</sup> This process differs from the departure process at air and sea ports of entry where departure information is received and recorded electronically.

nonimmigrant as a printout or other confirmation of the electronic record stored in DHS systems.”

## *2. 8 CFR part 212*

Section 212.1 of the DHS regulations (8 CFR 212.1), titled “Documentary requirements for nonimmigrants,” refers to the Visa Waiver Pilot Program. On October 30, 2000, the Visa Waiver Permanent Program Act, Public Law 106-396, established the VWP as a permanent program and replaced the Visa Waiver Pilot Program. Therefore, this section is amended to remove the reference to the “Visa Waiver Pilot Program” and refer instead to the “Visa Waiver Program.”

## *3. 8 CFR part 217*

Section 217.1 of the DHS regulations (8 CFR 217.1), titled “Scope,” refers to the Visa Waiver Pilot Program. This section is amended to remove the reference to the “Visa Waiver Pilot Program” and instead refer to the “Visa Waiver Program (VWP).”

Section 217.2 of the DHS regulations (8 CFR 217.2) describes the eligibility requirements to travel under the VWP. Specifically, § 217.2(b)(1) provides that in addition to meeting all the requirements for the “Visa Waiver Pilot Program,” each applicant must possess a valid, unexpired passport issued by a designated country and present a completed, signed Form I-94W. This provision is amended to delete the reference to Form I-94W and add the new requirement to obtain a travel authorization via ESTA. Also, the paragraph is amended to delete the reference to the “Visa Waiver Pilot Program” and refer instead to the “Visa Waiver Program.”

This rule also makes non-substantive amendments to § 217.2 to make the regulation current, correct, and consistent. Specifically, §§ 217.2(a), (c), and (d) and 217.3(b) are amended to delete the references to the “Visa Waiver Pilot Program” and refer instead to the “Visa Waiver Program (VWP).” These provisions are also being updated by replacing the legacy Immigration and Naturalization Service position title

(“immigration officer”) with the current DHS position title (“CBP officer”).

Section 217.5 (8 CFR 217.5) sets forth the requirements for ESTA. In particular, § 217.5(a) requires nonimmigrant noncitizens intending to travel by air or sea to the United States under the VWP to receive a travel authorization prior to boarding a carrier destined for the United States. This provision is amended to require nonimmigrant noncitizens intending to travel by land to the United States under the VWP to obtain a travel authorization prior to application for admission to the United States at a land port of entry.

Section 217.5(b) specifies the time frames for obtaining a travel authorization through ESTA for VWP travelers arriving at air and sea ports of entry. The paragraph is amended to also specify the time frame for obtaining a travel authorization for VWP travelers arriving at land ports of entry, *i.e.*, prior to application for admission to the United States. Current § 217.5(c) provides that the DHS Secretary may collect certain information to issue a travel authorization and refers to the Form I-94W. When the ESTA program is implemented at U.S. land ports of entry, DHS will no longer require VWP travelers to complete the Form I-94W. Therefore, the paragraph is amended by removing the references to the Form I-94W and referring instead to ESTA.

Current § 217.5(g) provides that once ESTA is implemented as a mandatory program, 60 days following publication by the Secretary of a notice in the *Federal Register*, citizens and eligible nationals of countries that participate in the VWP must comply with the requirements of this section. It further provides that as new countries are added to the VWP, citizens and eligible nationals of those countries will be required to obtain a travel authorization prior to traveling to the United States under the VWP. This language is outdated because it has been overtaken by the following events. First, the Secretary published the referenced notice in the *Federal Register* on November 13, 2008 (73 FR 67354), and ESTA was implemented as a mandatory program for VWP travelers



arriving at air and sea ports 60 days later. Second, this interim final rule expanding ESTA to VWP travelers arriving at land ports of entry will be effective 30 days after publication. Third, the provision about new countries is now fully covered by the general provision about travel authorization in § 217.5(a). Therefore, the outdated language is deleted.

#### *4. 8 CFR part 286*

Part 286 of the DHS regulations (8 CFR part 286) concerns immigration user fees. Specifically, § 286.9 describes the fee for processing applications and issuing documentation at land border ports of entry. This section will be amended to delete the references to the “Visa Waiver Pilot Program” and refer instead to the “Visa Waiver Program.”

### **IV. Statutory and Regulatory Requirements**

#### **A. Administrative Procedure Act**

##### *1. Procedural Rule Exception*

The Administrative Procedure Act (APA) generally requires agencies to publish a notice of proposed rulemaking in the *Federal Register* (5 U.S.C. 553(b)) and provide interested persons the opportunity to submit comments (5 U.S.C. 553(c)). However, the APA provides an exception to this prior notice and comment requirement for “rules of agency organization, procedure, or practice” 5 U.S.C. 553(b)(A). This interim final rule is a procedural rule promulgated for efficiency purposes that falls within this exception.

This rule is procedural because it merely changes the method of submission for an existing reporting requirement for nonimmigrant noncitizens pursuant to existing statutes and regulations. *See* 8 U.S.C. 1103, 1184 and 1187. *See also* 8 CFR 212.1, 299.1, and 8 CFR parts 2 and 217. The rule merely changes the manner in which noncitizens seeking admission to the United States under the VWP, at ports of entry along the land border, present information to DHS and does not alter the rights or interests of those noncitizens

as they seek admission to the United States. Such arriving noncitizens will no longer be required to complete and submit the paper Form I-94W. Instead, all required information will be submitted to DHS electronically through the ESTA website. In addition, this rule neither affects the substantive criteria by which CBP officers inspect noncitizens upon arrival nor the nature of the information at CBP's disposal.

## *2. Foreign Affairs Function Exception*

This interim final rule is also exempt from the rulemaking provisions of the Administrative Procedure Act (APA) pursuant to 5 U.S.C. 553(a)(1) as it involves a foreign affairs function of the United States. This rule advances the President's foreign policy goals and directly involves relationships between the United States and its noncitizen visitors.

ESTA is an integral part of the administration of the VWP, a program that involves an inherently foreign affairs function of the United States. Specifically, the VWP, which is administered by DHS in consultation with the Department of State, enables eligible citizens or nationals of designated countries to travel to the United States for tourism or business for stays of 90 days or less without first obtaining a visa, provided they meet certain requirements. Among other things, a traveler must have a valid authorization through ESTA. As part of the ESTA screening process, CBP reviews available information regarding ESTA applicants to determine whether they present a concern to U.S. national security or law enforcement (to include immigration enforcement) interests.

Accordingly, any rulemaking actions undertaken to implement ESTA at land ports of entry are exempt from APA notice and comment requirements. However, DHS is interested in receiving public comments on this interim final rule and, therefore, is providing the public with the opportunity to comment without delaying implementation of this rule.

## **B. Executive Orders 13563 and 12866**

Executive Orders (EOs) 13563 (“Improving Regulation and Regulatory Review”) and 12866 (“Regulatory Planning and Review”) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This rule is not a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this rule. Although this rule is not subject to the requirements of Executive Orders 13563 and 12866 due to the foreign affairs exception, DHS has reviewed this interim final rule to ensure its consistency with the regulatory philosophy and principles set forth in those Executive orders. DHS has also prepared a regulatory impact assessment to help inform stakeholders of the impacts of this rule, which DHS has summarized below. The complete assessment can be found in the public docket for this rulemaking at [www.regulations.gov](http://www.regulations.gov).

### *1. Purpose of Rule*

This rule will extend the regulatory requirements of ESTA to the land environment per the 9/11 Act. For VWP travelers arriving at U.S. land ports of entry (POEs), all the ESTA requirements currently in 8 CFR 217.5 will remain the same as the requirements for VWP travelers arriving at air and sea ports, except for the time frame for obtaining the travel authorization. Under the ESTA Land IFR, VWP travelers intending to travel to the United States by land must receive a travel authorization prior to application for admission to, rather than prior to embarking on a carrier destined for, the United States. These travelers may obtain the required travel authorization by submitting

an electronic application to CBP through the ESTA website (<https://esta.cbp.dhs.gov/esta/>) and paying the ESTA application fee, which consists of an operational fee and Travel Promotion Act (TPA) fee valid until FY 2021.<sup>16</sup> The ESTA application serves as an electronic version of the paper Form I-94W, asking for the same biographical, personal, and trip-related information currently requested on the paper Form I-94W as well as several additional security-related questions not on the paper Form I-94W but typically asked during paper Form I-94W processing. CBP will use the ESTA application information to assess a traveler's likely admissibility and any potential risks to the United States. Based on this assessment, CBP will either grant or deny an ESTA travel authorization, which will generally take two hours for CBP to complete. If CBP grants an ESTA travel authorization, the authorization will generally be valid for a period of two years from the date of issuance (barring revocation), meaning that the VWP traveler granted the authorization may travel to the United States repeatedly within a two-year period without obtaining another authorization. If CBP denies an ESTA travel authorization, CBP will refer the VWP traveler denied the authorization to a U.S. Embassy or Consulate to apply to obtain a visa, like in the current paper Form I-94W environment.

If a VWP traveler arrives without an advance ESTA travel authorization, CBP will generally advise the traveler to complete the ESTA application in an area outside of the U.S. land POE. In this case, the traveler may be permitted to withdraw his or her application for admission, and once withdrawn, travel back to either Canada or Mexico, apply for the ESTA authorization there, and typically wait two hours to receive his or her

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<sup>16</sup> As previously stated, on February 9, 2018, section 30203(a) of the Bipartisan Budget Act of 2018, Pub. L. 115-123, extended the sunset provision of the travel promotion fee through September 30, 2027. On December 20, 2019, section 806 of the Further Consolidated Appropriations Act of 2020, Pub. L. 116-94, increased the travel promotion fee from \$10 to \$17. *See* 8 U.S.C. 1187(h)(3)(B), as amended, and 8 CFR 217.5(h). CBP will be publishing a separate rule to reflect these legislative changes. This analysis does not capture these changes.

authorization status. Once approved, the traveler can then return to a U.S. land POE to apply for admission.

In addition to fulfilling a statutory mandate, this rule will strengthen national security through enhanced traveler vetting, streamline Form I-94W processing through automation, reduce inadmissible traveler arrivals, and produce a uniform VWP admission policy in all U.S. travel environments, which will benefit VWP travelers, CBP, and the public.

## 2. Population Affected by Rule

This rule will affect VWP travelers, CBP, and the public. Due to numerous factors that affect travel, CBP uses two different projection methods to estimate the population of VWP travelers affected by this rule over a 10-year period of analysis spanning from FY 2019 to FY 2028. Under these methods, CBP estimates that VWP travelers will submit between 3.2 million and 4.1 million ESTA applications for land admission during the period of analysis, though CBP will deny about 3,200 to 4,100 of these applications and related travel authorizations (see Table 1).<sup>17</sup> These denials will be higher with ESTA's enhanced vetting, though the extent is unknown.<sup>18</sup> Given ESTA's existing requirements in the U.S. air and sea environments, some of the application figures in Table 1 may correspond to travelers who already have valid ESTA travel authorizations first obtained for travel to the United States by air and sea that will allow them to avoid completing travel authorizations with this rule. However, the number of such travelers is unknown.

**Table 1. Projected ESTA Applications with Rule**

Fiscal Year	<u>Method 1 (Primary Estimate)- With Rule</u>			<u>Method 2- With Rule</u>		
	ESTA Application Approvals	ESTA Application Denials	Total ESTA Applications	ESTA Application Approvals	ESTA Application Denials	Total ESTA Applications
2019	323,504	324	323,828	349,319	360	349,540
2020	323,504	324	323,828	359,317	360	359,677
2021	323,504	324	323,828	371,894	372	372,266
2022	323,504	324	323,828	385,281	386	385,667

<sup>18</sup> Source: Email correspondence with CBP's Office of Field Operations on March 16, 2016.

2023	323,504	324	323,828	398,381	399	398,780
2024	323,504	324	323,828	411,926	412	412,338
2025	323,504	324	323,828	425,932	426	426,358
2026	323,504	324	323,828	440,413	441	440,854
2027	323,504	324	323,828	455,870	456	455,843
2028	323,504	324	323,828	470,870	471	471,341
<b>Total</b>	<b>3,235,040</b>	<b>3,240</b>	<b>3,238,280</b>	<b>4,068,591</b>	<b>4,073</b>	<b>4,072,664</b>

Note: Estimates may not sum to total due to rounding.

CBP plans to conduct extensive outreach on ESTA's requirements in the land environment prior to the effective date of this rule through electronic messaging, informational bulletins, and travel partner meetings.<sup>19</sup> Nevertheless, some VWP travelers may not be fully aware of this rule's requirements when traveling to the United States via land. CBP estimates that 4 percent of the projected ESTA applications in FY 2019 will correspond to VWP travelers who arrive to U.S. land POEs without advance ESTA travel authorizations. CBP believes that this share will decrease to 1 percent of annual ESTA applications for FY 2020 through FY 2028 due to the time and costs associated with arriving without an ESTA travel authorization and increased knowledge of ESTA's requirements.<sup>20</sup> As shown in Table 2, CBP projects that 42,000 to 51,000 VWP travelers will arrive to U.S. land POEs without advance ESTA travel authorizations over the period of analysis. CBP believes that the vast majority of these arrivals will occur at U.S. land POEs along the northern border based on the relatively high volume of VWP traveler arrivals at those POEs.<sup>21</sup>

**Table 2. Projected Arrivals of VWP Travelers at U.S. Land POEs without Advance ESTA Travel Authorizations**

<b>Fiscal Year</b>	<b><u>Method 1 (Primary Estimate)- With Rule</u></b>	<b><u>Method 2- With Rule</u></b>
	<b>Total VWP Traveler Arrivals without Advance ESTA Travel Authorizations</b>	<b>Total VWP Traveler Arrivals without Advance ESTA Travel Authorizations</b>

<sup>19</sup> Source: Correspondence with CBP's Office of Field Operations on November 26, 2018.

<sup>20</sup> Source: Email correspondence with CBP's Office of Field Operations on September 11, 2018.

<sup>21</sup> About 90 percent of VWP land traveler admissions between FY 2013 and FY 2017 occurred at U.S. land POEs along the northern border. Sources: Email correspondence with CBP's Office of Field Operations on May 17, 2018, and correspondence on November 26, 2018.

2019	12,953	13,982
2020	3,238	3,597
2021	3,238	3,723
2022	3,238	3,857
2023	3,238	3,988
2024	3,238	4,123
2025	3,238	4,264
2026	3,238	4,409
2027	3,238	4,558
2028	3,238	4,713
<b>Total</b>	<b>42,095</b>	<b>51,214</b>

Note: Estimates may not sum to total due to rounding.

With this rule, CBP anticipates that the nearly 3,200 to 4,100 VWP travelers with ESTA application and travel authorization denials between FY 2019 and FY 2028 will forgo travel to the United States under the VWP altogether because they will be refused admission at U.S. land POEs without travel authorizations. These ESTA denials will result in 3,200 to 4,100 fewer distinct and total VWP traveler arrivals than projected in the absence of this rulemaking. CBP assumes that these ESTA denials will only affect the number of distinct arrivals anticipated with this rule and not the number of non-distinct arrivals. CBP estimates that the number of non-distinct arrivals of VWP travelers with valid departure coupons that generally allow for the avoidance of secondary processing and Form I-94W fee payments with this rule will be the same number projected without this rule, ranging from 1.0 million to 1.3 million over the period of analysis (see Table 3). The remaining 3.6 million to 4.6 million VWP land traveler arrivals projected with this rule will represent distinct arrivals requiring CBP's primary and secondary processing and Form I-94W fee payments (see Table 3). In total, VWP land traveler arrivals are expected to reach 4.7 million to 5.9 million during the period of analysis with this rule (see Table 3). To the extent that the application denials with this rule are greater than projected, the number of total arrivals will be fewer than shown in Table 3.

**Table 3. Projected Arrivals of VWP Travelers at U.S. Land POEs with Rule**

<b>Fiscal Year</b>	<b><u>Method 1 (Primary Estimate)- With Rule</u></b>			<b><u>Method 2- With Rule</u></b>		
	<b>Distinct Arrivals</b>	<b>Non-Distinct Arrivals</b>	<b>Total Arrivals</b>	<b>Distinct Arrivals</b>	<b>Non-Distinct Arrivals</b>	<b>Total Arrivals</b>
2019	363,528	103,824	467,352	392,392	112,068	504,460
2020	363,528	103,824	467,352	403,771	115,318	519,089
2021	363,528	103,824	467,352	417,904	119,354	537,258
2022	363,528	103,824	467,352	432,948	123,651	556,599
2023	363,528	103,824	467,352	447,668	127,855	575,523
2024	363,528	103,824	467,352	462,889	132,202	595,091
2025	363,528	103,824	467,352	478,628	136,696	615,324
2026	363,528	103,824	467,352	494,901	141,344	636,245
2027	363,528	103,824	467,352	511,727	146,150	657,877
2028	363,528	103,824	467,352	529,126	151,119	680,245
<b>Total</b>	<b>3,635,280</b>	<b>1,038,240</b>	<b>4,673,520</b>	<b>4,571,954</b>	<b>1,305,757</b>	<b>5,877,711</b>

Note: Estimates may not sum to total due to rounding.

This rule's impact on CBP operations depends on its changes to VWP traveler arrivals and processing, whereas its effect on the public depends on its ability to deter otherwise inadmissible VWP travelers from traveling to the United States.

### 3. *Costs of Rule*

CBP will sustain ESTA-related maintenance, operation, and administration costs with this rule's implementation; however, CBP believes that the ESTA application fee collected from VWP travelers in the air, sea, and land environments will completely offset the ESTA Land IFR's costs to the agency. Thus, this rule will not introduce any unreimbursed costs to CBP. Instead, VWP travelers required to complete an ESTA application will bear all the direct costs of this rule. As stated earlier, this rule will require applicable VWP travelers to submit an ESTA application, pay the accompanying ESTA application fee, and receive a travel authorization in advance of admission at a U.S. land POE. Each ESTA application will take a VWP traveler an estimated 23



minutes (0.3833 hours) to complete,<sup>22</sup> at a time cost of \$7.82.<sup>23</sup> Depending on whether CBP approves or denies an application and travel authorization, VWP travelers must also pay a \$4.00 operational fee, a \$10.00 Travel Promotion Act fee (for approved applications only until FY 2021), and typically a foreign transaction fee with their ESTA application.<sup>24</sup>

VWP travelers who arrive to U.S. land POEs without advance travel authorizations will incur time, travel, toll, and internet access expenses to travel to/from Canada and Mexico to apply and wait for an ESTA travel authorization. These travelers will sustain a \$36.72 additional CBP processing time cost, a \$5.78 additional Canadian or Mexican entry processing time cost, a \$4.30 travel cost, and a \$40.80 authorization wait time cost while traveling to/from Canada or Mexico to apply and wait for an ESTA travel authorization. Approximately 20 percent of the population of VWP travelers projected to arrive to a U.S. land POE without an advance ESTA travel authorization (see Table 2) will also sustain a toll cost of \$3.50. Additionally, of the VWP travelers projected to arrive to a U.S. land POE without an advance ESTA travel authorization (see Table 2), an estimated 28 percent will pay a \$2.00 fee to use an internet-accessible computer to apply and wait for their ESTA travel authorization. Considering these advance ESTA travel authorization and wait time costs and the number of VWP travelers projected to arrive

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<sup>22</sup> Source: U.S. Customs and Border Protection. *Supporting Statement for Paperwork Reduction Act Submission 1651-0111: Arrival and Departure Record (Forms I-94, I-94W) and Electronic System for Travel Authorization (ESTA)*. February 12, 2019. Available at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201810-1651-001](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201810-1651-001). Accessed May 22, 2019.

<sup>23</sup> \$20.40 hourly time value x 0.3833-hour time burden to complete ESTA application = \$7.82 (rounded). CBP bases the \$20.40 hourly time value for VWP travelers on the U.S. Department of Transportation's (DOT) hourly time value of \$20.40 for all-purpose, intercity travel by surface-modes, except high-speed rail. For the purposes of this analysis, CBP assumes that the DOT time value, reported in 2015 U.S. dollars, would be the same for 2019. Source: U.S. Department of Transportation, Office of Transportation Policy. *The Value of Travel Time Savings: Departmental Guidance for Conducting Economic Evaluations Revision 2 (2016 Update)*. "Table 4 (Revision 2 - 2016 Update): Recommended Hourly Values of Travel Time Savings." September 27, 2016. Available at <https://www.transportation.gov/sites/dot.gov/files/docs/2016%20Revised%20Value%20of%20Travel%20Time%20Guidance.pdf>. Accessed June 11, 2018.

<sup>24</sup> When CBP applies the average foreign currency transaction fee rate to the ESTA application and TPA fees, the full ESTA application cost is \$14.42 for travelers granted travel authorizations through FY 2020.

without advance ESTA travel authorizations under this alternative, CBP estimates that these authorization requirements will introduce a total undiscounted cost of \$4.2 million to VWP travelers between FY 2019 and FY 2028 according to CBP’s primary estimation method.

In total, VWP travelers will sustain \$49.1 million in undiscounted time, fee, and other costs from this rule over the period of analysis under Method 1, CBP’s primary estimation method. In present value terms, this cost to VWP travelers, which represents the total cost of the rule, will measure \$38.5 million (using a 7 percent discount rate; see Table 4). On an annualized basis, the cost of this rule will equal \$5.1 million under the primary estimation method, as shown in Table 4 (using a 7 percent discount rate).

**Table 4. Total Monetized Present Value and Annualized Costs of Rule, FY 2019-FY 2028 (2019 U.S. Dollars)**

	3% Discount Rate		7% Discount Rate	
	Present Value Cost	Annualized Cost	Present Value Cost	Annualized Cost
Method 1 (Primary Estimate)	\$43,929,986	\$4,999,936	\$38,529,526	\$5,126,858
Method 2	\$53,652,846	\$6,106,554	\$46,527,106	\$6,191,040

Note: The estimates in this table are contingent upon CBP’s expectations of the population affected by the rule and the discount rates applied.

#### 4. *Benefits of Rule*

ESTA’s Form I-94W automation, advance-vetting and travel authorization denials, and uniform VWP admission policy will offer benefits (including cost savings) to VWP travelers, CBP, and the public. VWP travelers will experience 24 minutes (0.4 hours) of time savings per distinct arrival from avoided paper Form I-94W processing burdens,<sup>25</sup> at a time cost saving of \$8.16.<sup>26</sup> Travelers denied travel authorizations who choose to forgo travel to the United States under the VWP will save 136 minutes (2.2667

<sup>25</sup> Sources: U.S. Customs and Border Protection. Supporting Statement for Paperwork Reduction Act Submission 1651-0111: Arrival and Departure Record (Forms I-94, I-94W) and Electronic System for Travel Authorization (ESTA). February 12, 2019. Available at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201810-1651-001](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201810-1651-001). Accessed May 22, 2019; email correspondence with CBP’s Office of Field Operations on November 30, 2012.

<sup>26</sup> Based on the assumed hourly time value for VWP travelers of \$20.40. \$20.40 hourly time value x 0.4 hours saved from forgone paper Form I-94W application and certain secondary processing time burdens = \$8.16 (rounded).

hours) in avoided Form I-94W completion time and inadmissible inspection time,<sup>27</sup> at a time cost saving of \$46.24, and \$6.00 in avoided Form I-94W fee costs.<sup>28</sup> Together with the savings from Form I-94W automation and travel that does not occur as a result of denied travel authorizations, VWP travelers will enjoy \$29.8 million in undiscounted, monetized cost savings from this rule over the period of analysis under the primary estimation method. VWP travelers will also enjoy non-quantified benefits from this rule's uniform admission policy in all U.S. travel environments, which may prevent some travelers from being denied boarding on air or sea carriers because they do not have an ESTA travel authorization.

Similar to VWP travelers, CBP will enjoy 8 minutes (0.1333 hours) of time savings per distinct arrival from this rule's Form I-94W automation,<sup>29</sup> at a time cost saving of \$11.58.<sup>30</sup> CBP will also save 120 minutes (2 hours) in avoided traveler inspection time per inadmissible traveler inspection avoided through ESTA's implementation in the land environment,<sup>31</sup> at a time cost saving of \$173.74.<sup>32</sup> Overall, this rule's Form I-94W automation and forgone arrivals by those denied travel

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<sup>27</sup> This includes the time it takes to complete a paper Form I-94W (16 minutes, or 0.2667 hours) and complete an inadmissible traveler inspection (120 minutes, or 2 hours). For the purposes of this analysis, CBP assumes that this time burden includes any time burdens incurred at a U.S. land POE as an inadmissible VWP traveler. This average time burden is greater than the time burden for VWP travelers who simply arrive to a U.S. land POE without an advance ESTA authorization because general inadmissibility examinations, such as those for travelers who are outright inadmissible due to reasons such as criminal history, outstanding warrant, or an expired passport, typically require examinations that are more thorough and require added processing time. Source: Email correspondence with CBP's Office of Field Operations on March 16, 2016, correspondence on November 26, 2018, and email correspondence on May 23, 2019.

<sup>28</sup> Based on the assumed hourly time value for VWP travelers of \$20.40. \$20.40 hourly time value x 2.2667 hours saved from forgone inadmissible arrival time burdens = \$46.24 (rounded).

<sup>29</sup> Sources: U.S. Customs and Border Protection. *Supporting Statement for Paperwork Reduction Act Submission 1651-0111: Arrival and Departure Record (Forms I-94, I-94W) and Electronic System for Travel Authorization (ESTA)*. February 12, 2019. Available at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201810-1651-001](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201810-1651-001). Accessed May 22, 2019; email correspondence with CBP's Office of Field Operations on November 30, 2012.

<sup>30</sup> \$86.87 fully loaded hourly wage rate for CBP officers x 0.1333 hours saved per distinct VWP traveler arrival = \$11.58 (rounded). CBP bases the \$86.87 hourly wage on the FY 2019 salary, benefits, and non-salary costs (*i.e.*, fully loaded wage) of the national average of CBP officer positions. Source of wage rate: Email correspondence with CBP's Office of Finance on June 1, 2018.

<sup>31</sup> Source: Email correspondence with CBP's Office of Field Operations on March 16, 2016, correspondence on November 26, 2018, and email correspondence on May 23, 2019.

<sup>32</sup> Based on the fully loaded hourly wage rate for CBP officers of \$86.87. \$86.87 fully loaded hourly wage rate for CBP officers x 2 hours saved per inadmissible traveler inspection avoided = \$173.74 (rounded).

authorizations will offer \$42.7 million in undiscounted, monetized cost savings to CBP between FY 2019 and FY 2028 under the primary estimation method. Note that these are not budgetary savings—they are savings that CBP will dedicate to other agency mission areas, such as improving border security or expediting the processing of travelers. In addition to these monetized benefits, ESTA’s advance and robust traveler screening process will offer the benefit of strengthened national security, which the public will enjoy.

In total, this rule will offer undiscounted cost savings totaling \$72.5 million between FY 2019 and FY 2028 under the primary estimation method. When discounted, these savings will measure \$54.5 million in present value and \$7.2 million on an annualized basis (using a 7 percent discount rate; see Table 5). This rule will also strengthen national security and introduce a uniform VWP admission policy in all U.S. travel environments, providing non-quantifiable benefits to travelers and the public.

These estimates vary according to the projection method and discount rate applied.

**Table 5. Total Monetized Present Value and Annualized Benefits (Cost Savings) of Rule, FY 2019-FY 2028 (2019 U.S. Dollars)**

	3% Discount Rate		7% Discount Rate	
	Present Value Benefit	Annualized Benefit	Present Value Benefit	Annualized Benefit
Method 1 (Primary Estimate)	\$63,692,790	\$7,249,260	\$54,479,874	\$7,249,260
Method 2	\$79,452,253	\$9,042,940	\$67,252,192	\$8,948,784

Note: The estimates in this table are contingent upon CBP’s expectations of the population affected by the rule and the discount rates applied.

### 5. *Net Impact of Rule*

Table 6 summarizes the monetized and non-monetized costs and benefits of this rule to VWP travelers, CBP, and the public. As shown, the total monetized present value net benefit (or net cost saving) of this rule is \$16.0 million, while its annualized net benefit totals \$2.1 million according to CBP’s primary estimation method (using a 7 percent discount rate). In addition to these monetized impacts, this rule will strengthen national security through its advance and more robust traveler screening process and

produce a uniform VWP admission policy in all U.S. travel environments, though these benefits are unmeasured. These estimates vary according to the projection method and discount rate applied.

**Table 6. Net Benefit of Rule, FY 2019-FY 2028 (2019 U.S. Dollars)**

	3% Discount Rate		7% Discount Rate	
	Present Value	Annualized	Present Value	Annualized
<b><u>Method 1 (Primary Estimate)</u></b>				
<b><i>Total Cost</i></b>				
Monetized	\$43,929,986	\$4,999,936	\$38,529,526	\$5,126,858
Non-Monetized, but Quantified	--	--	--	--
Non-Monetized and Non-Quantified	--	--	--	--
<b><i>Total Benefit, Incl. Cost Savings</i></b>				
Monetized (Cost Saving)	\$63,692,790	\$7,249,260	\$54,479,874	\$7,249,260
Non-Monetized, but Quantified	--	--	--	--
Non-Monetized and Non-Quantified	Strengthened national security and uniform VWP admission policy		Strengthened national security and uniform VWP admission policy	
<b><i>Total Net Benefit, Incl. Cost Savings</i></b>				
Monetized (Net Cost Saving)	\$19,762,805	\$2,249,324	\$15,950,348	\$2,122,403
Non-Monetized, but Quantified	--	--	--	--
Non-Monetized and Non-Quantified	Strengthened national security and uniform VWP admission policy		Strengthened national security and uniform VWP admission policy	

**Table 6, Continued. Net Benefit of Rule, FY 2019-FY 2028 (2019 U.S. Dollars)**

	3% Discount Rate		7% Discount Rate	
	Present Value	Annualized	Present Value	Annualized
<b>Method 2</b>				
<b><i>Total Cost</i></b>				
Monetized	\$53,652,846	\$6,106,554	\$46,527,106	\$6,191,040
Non-Monetized, but Quantified	--	--	--	--
Non-Monetized and Non-Quantified	--	--	--	--
<b><i>Total Benefit, Incl. Cost Savings</i></b>				
Monetized (Cost Saving)	\$79,452,253	\$9,042,940	\$67,252,192	\$8,948,784
Non-Monetized, but Quantified	--	--	--	--
Non-Monetized and Non-Quantified	Strengthened national security and uniform VWP admission policy		Strengthened national security and uniform VWP admission policy	
<b><i>Total Net Benefit, Incl. Net Cost Savings</i></b>				
Monetized (Net Cost Saving)	\$25,799,407	\$2,936,386	\$20,725,086	\$2,757,744
Non-Monetized, but Quantified	--	--	--	--
Non-Monetized and Non-Quantified	Strengthened national security and uniform VWP admission policy		Strengthened national security and uniform VWP admission policy	

Notes: The estimates in this table are contingent upon CBP's expectations of the population affected by the rule and the discount rates applied. Estimates may not sum to total due to rounding.

### **C. Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule. Since a general notice of proposed rulemaking is not necessary for this rule, CBP is not required to prepare a regulatory flexibility analysis for this rule.

### **D. Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### **E. Executive Order 13132**

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, DHS has determined that this interim final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

#### **F. Executive Order 12988 Civil Justice Reform**

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

#### **G. Paperwork Reduction Act**

An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget (OMB).

OMB-approved collection 1651-0111 will be amended to reflect the new applicants that will be using the ESTA website as a result of this interim final rule. CBP estimates that this rule will result in an additional 323,828 respondents (ESTA applicants) annually and an additional 124,123 burden hours.<sup>33</sup> Of the 323,828 new ESTA respondents, CBP estimates that 323,504 will receive a travel authorization and 324 will not. Collection 1651-0111 will be revised to reflect the new total annual estimates for ESTA as follows:

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<sup>33</sup> CBP uses the number of ESTA applications projected in FY 2019 under Method 1 of the regulatory impact analysis for this estimate because it is CBP's primary estimation method.

Estimated number of annual respondents: 23,333,828

Estimated number of annual responses: 23,333,828

Estimated time burden per response: 23 minutes (0.3833 hours)

Estimated total annual time burden: 8,943,856 hours

These respondents include new and repeat ESTA applicants. Only new applicants or applicants whose authorization has expired will be required to pay the ESTA fee. The additional 323,828 ESTA applicants introduced with this rule will pay the ESTA fee, which will result in an additional estimated cost of \$4,530,352 for this collection of information. This cost is based on the additional number of respondents granted a travel authorization through ESTA annually (323,504) multiplied by (x) the \$14.00 ESTA fee to apply and receive a travel authorization = \$4,529,056, plus the additional number of respondents denied a travel authorization through ESTA (324) multiplied by (x) the \$4.00 ESTA operational fee = \$1,296, for a total of \$4,530,352.<sup>34</sup>

OMB-approved collection 1651-0111 will also be revised to reflect the elimination of CBP's paper Form I-94W for land travelers, which is an additional result of this rule. The current approved number of estimated annual respondents for the paper Form I-94W of 941,291 will be removed. Respondents will now be categorized under "ESTA" on the collection because the paper Form I-94W data will now be collected electronically through ESTA.

#### **H. Privacy Interests**

DHS published an ESTA Privacy Impact Assessment (PIA) for the interim final rule announcing ESTA at air or sea ports of entry on June 9, 2008. Additionally, at that time, DHS prepared a separate System of Record Notice (SORN) that was published in conjunction with the IFR on June 9, 2008. DHS has updated these documents since that

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<sup>34</sup> These costs do not account for foreign transaction fees that respondents may incur with their ESTA application.



time and the most current ESTA PIA and SORN are available for viewing at:

<https://www.dhs.gov/privacy-documents-us-customs-and-border-protection>.

## **List of Subjects**

### **8 CFR Part 103**

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Immigration, Privacy, Reporting and recordkeeping requirements, Surety bonds.

### **8 CFR Part 212**

Administrative practice and procedure, Aliens, Immigration, Passport and visas, Reporting and recordkeeping requirements.

### **8 CFR Part 217**

Air carriers, Aliens, Maritime carriers, Passports and visas.

### **8 CFR Part 286**

Air carriers, Immigration, Maritime carriers, Reporting and recordkeeping.

## **Amendments to the Regulations**

For the reasons stated in the preamble, DHS is amending 8 CFR parts 103, 212, 217, and 286 as set forth below.

## **PART 103 – IMMIGRATION BENEFIT REQUESTS; USCIS FILING REQUIREMENTS; BIOMETRIC REQUIREMENTS; AVAILABILITY OF RECORDS**

1. The authority citation for part 103 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356, 1365b; 31 U.S.C. 9701; Pub. L. 107-296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2; Pub. L. 112-54; 125 Stat. 550; 31 CFR part 223.

2. Amend § 103.7 by revising paragraph (d)(5) to read as follows:

**§ 103.7 Fees.**

\* \* \* \* \*

(d) \* \* \*

(5) *Form I-94W*. For issuance of Form I-94W or other Nonimmigrant Visa Waiver Arrival/Departure record at a land border port-of-entry under section 217 of the Act: \$6.00. The term ‘issuance’ includes, but is not limited to, the creation of an electronic record of admission or arrival/departure by DHS following an inspection performed by a CBP officer, which may be provided to the nonimmigrant as a printout or other confirmation of the electronic record stored in DHS systems.

\* \* \* \* \*

**PART 212 – DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS;  
WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE**

3. The authority citation for part 212 continues to read as follows:

**Authority:** 6 U.S.C. 111, 202(4) and 271; 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227, 1255, 1359; section 7209 of Pub. L. 108-458 (8 U.S.C. 1185 note); Title VII of Pub. L. 110-229 (8 U.S.C. 1185 note); 8 CFR part 2; Pub. L. 115-218.

Section 212.1(q) also issued under section 702, Pub. L. 110-229, 122 Stat. 754, 854.

**§ 212.1 [Amended]**

4. Amend § 212.1 by removing the word “Pilot” from the heading and text of paragraph (i).

**PART 217 – VISA WAIVER PROGRAM**

5. The authority citation for part 217 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1187; 8 CFR part 2.

**§ 217.1 [Amended]**

6. Amend § 217.1 by removing the word “Pilot” and removing the parenthetical “(VWPP)” and adding in its place “(VWP)”.

7. Amend § 217.2 as follows:

a. Remove the word “Pilot” wherever it appears; and

b. Revise paragraphs (b)(1) and (c)(2).

The revisions read as follows:

**§ 217.2 Eligibility.**

\* \* \* \* \*

(b) \* \* \*

(1) *General.* In addition to meeting all of the requirements for the Visa Waiver Program specified in section 217 of the Act, each applicant must possess a valid, unexpired passport issued by a designated country and obtain a travel authorization via the Electronic System for Travel Authorization (ESTA) as provided in § 217.5.

\* \* \* \* \*

(c) \* \* \*

(2) *Applicants arriving at land border ports of entry.* Any Visa Waiver Program applicant arriving at a land border port of entry must provide evidence to the CBP officer of financial solvency and a domicile abroad to which the applicant intends to return. An applicant arriving at a land border port of entry will be charged a fee as prescribed in § 103.7(d)(5) of this chapter for issuance of Form I-94W, Nonimmigrant Visa Waiver Arrival/Departure Form. A round-trip transportation ticket is not required.

\* \* \* \* \*

**§ 217.3 [Amended]**

8. Amend § 217.3(b) by removing the word “Pilot”.

9. Amend § 217.5 as follows:

a. Revise paragraphs (a), (b), and (c); and

- b. Remove and reserve paragraph (g).

The revisions read as follows:

**§ 217.5 Electronic System for Travel Authorization.**

(a) *Travel authorization required.* Each nonimmigrant alien intending to travel by air, sea, or land to the United States under the Visa Waiver Program (VWP) must, within the time specified in paragraph (b) of this section, receive a travel authorization, which is a positive determination of eligibility to travel to the United States under the VWP via the Electronic System for Travel Authorization (ESTA), from CBP. In order to receive a travel authorization, each nonimmigrant alien intending to travel to the United States by air, sea, or land under the VWP must provide the data elements set forth in paragraph (c) of this section to CBP, in English, in the manner specified herein, and must pay a fee as described in paragraph (h) of this section.

(b) *Time--(1) Applicants arriving at air or sea ports of entry.* Each alien falling within the provisions of paragraph (a) of this section and intending to travel by air or sea to the United States under the VWP must receive a travel authorization via ESTA prior to boarding a carrier destined for travel to the United States.

(2) *Applicants arriving at land ports of entry.* Each alien falling within the provisions of paragraph (a) of this section and intending to travel by land to the United States under the VWP must receive a travel authorization via ESTA prior to application for admission to the United States.

(c) *Required elements.* CBP will collect such information as the Secretary deems necessary to issue a travel authorization as reflected in the ESTA application.

\* \* \* \* \*

**PART 286 – IMMIGRATION USER FEE**

10. The authority citation for part 286 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1356; Title VII of Public Law 110-229; 8 CFR part 2.

**§ 286.9 [Amended]**

11. Amend § 286.9(b)(2) as follows:

- a. Remove the word “Pilot”; and
- b. Add the words “, as prescribed in § 103.7(d)(5) of this chapter,” after “Form I-94W”.

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**Alejandro N. Mayorkas,**  
*Secretary,*  
*U.S. Department of Homeland Security.*

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